**Reserved Judgment**

**THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ Petition (M/S) No. 512 of 2005

Babu Lal Patwari, S/O Sri Suraj Mal Patwari,
R/O Ward No. 6, Gandhi Nagar, Near Nainital Bank
Police Station Lalkuan, District Nainital.

… **Petitioner.**

***Versus***

1. State of Uttaranchal through Collector Nainital
   District Nainital,
2. Commissioner, Kumaun Region, Nainital,
   District Nainital.
3. Satish Chandra Agarwal, R/O Main Bazar, Lalkuan,
   P.S. Lal Kuan, District Nainital.

…. **Respondents.**

**Sri Rakesh Thapaliyal, learned counsel for the petitioner.**
**Sri Nand Prasad, Learned Standing Counsel for the respondent no. 1 & 2.**

Date: April 04, 2006.

**(Hon'ble B.S. Verma, J.)**

The petitioner has preferred this writ petition for issue a writ, order or direction in the nature of certiorari quashing the order dated 9-12-2004 passed by the District Magistrate Nainital in Case No. 51/1 of 2004, whereby the District Magistrate had cancelled the gun licence of the petitioner as well as revolver licence issued to him. The petitioner has further challenged the order dated 2.3.2005 passed by the Commissioner in Appeal No. 5/2004-2005 preferred by the petitioner Babu Lal, whereby the order under appeal was affirmed and appeal was dismissed. It was also directed that the appellant-Babu Lal should not be issued arm licence for a period of one year.

Relevant facts giving rise to the writ petition are that on 2.10.2003 there was a procession of Agarwal Samaj where mob of about 500 persons participated and as per tradition, some of the

participants were having their licensed arms. One Mr. Amit Agarwal son of Satish Chandra Agarwal was also present along with his licensed gun. Accidentally said Amt. Agarwal sustained injuries in his legs on account of gun shot fire. Amit Agarwal lodged an F.I.R. with Police Station Lalkuan alleging therin that an altercation took place about 1, ½ month back between him and the petitioner regarding dashing of car on which the petitioner became furious and started abusing him and threatened him to shoot him. It was also alleged that on 2.10.2003, at about 5 p.m. father of the complainant was standing at his shop. The petitioner along with his Munshi Suresh came there armed with his gun and started saying absurdities and the petitioner gave his gun to his Munshi and asked him to finish him. On the instigation of petitioner, Suresh fired a shot at the father of Amit Agarwal, the respondent no.3, which hit on his person and Satish Chandra Agarwal went inside his shop. The petitioner after giving threats of dire consequences went away from the spot. The injured Satish Chandra was admitted in Krishna Hospital Haldwani for treatment. On the basis of this report, a case was registered at the Police Station Lalkuan at Crime No. 632/2003 on 2.10.2003 against the petitioner and his Munshi Suresh Singh Rawat. After investigation of the case, charge-sheet was filed against Suresh Singh Rawat alone in the court of the Judicial Magistrate Haldwani and the Criminal Case No. 703 of 2004 was registered against him. The accused confessed his guilt before the learned Judicial Magistrate and the accused was convicted and a fine of Rs. 550/- was imposed on the accused, which was deposited by the accused.

On the other hand, a Case No. 51 of 2004 was registered in the court of the District Magistrate Nainital against O.P.- petitioner Babulal Patwari. It reveals from the record that Satish Chandra Agarwal met the District Magistrate on 4.8.2004 and he orally informed the District Magistrate that on 2.10.2003, the licensee Babu Lal Patwari handed over his licensed gun to his Munshi Suresh Rawat, who fired shot at him with the result Satish Chandra Agarwal was badly injured. The District Magistrate by his order dated 6.8.2004 relying upon the crime No. 632 of 2003 under

Section 307 I.P.C. registered against the petitioner and Suresh and being satisfied on it issued show cause notice to the petitioner as to why the licensed arms issued to him be not cancelled. The petitioner filed his reply denying the allegations levelled against him. Ultimately, the District Magistrate by his judgment and order dated 9-12-2004 cancelled the licensed arms of the petitioner. Aggrieved by the judgment and order dated 9-12-2004, the petitioner went up in appeal before the Commissioner and in the memo of appeal apprised the fact that on the basis of Crime No. 632 of 2003 lodged at the Police Station Lalkuan, investigation was made by the police and ultimately charge-sheet was submitted against the accused Suresh Rawat alone, who confessed the guilt before the Magistrate and the matter under Crime No. 632 of 2003 was finally decided by conviction of Suresh Rawat. The learned Commissioner Kumaun Division Nainital in his judgment dated 2.3.2005 has accepted the fact that charge-sheet in respect of Crime No. 632 of 2003 was submitted against accused Suresh Rawat, who confessed his guilt for the offence under Section 338 of the I.P.C. which ended in his conviction and the accused was imposed fine of Rs. 500/-.

I have heard learned counsel for the parties and perused the entire material on record including the impugned orders.

It is pertinent to note that after lodging of F.I.R. at Crime No. 632 of 2003 under Section 307 I.P.C., the investigation was made by the police, charge-sheet was filed against Suresh Rawat and the police has not recommended for any action against the petitioner. The learned Commissioner appears to have lost sight of the fact that no charge-sheet was filed against the petitioner while the entire matter was based on the basis of Case Crime No. 632 of 2003. There is nothing on record to indicate that the petitioner was involved in any offence. Even the District Magistrate has observed that the show-cause notice was delivered to the son of Opposite Party Babu Lal Patwari. It has not been shown that the petitioner was trying to evade the service of notice on him. The order passed

by the District Magistrate is ex-parte order to that extent. When no police report has come forth against the petitioner regarding mis-use of licensed arms issued to the petitioner and as no charge-sheet was filed against him by the police, coupled with the fact that the show cause notice was not delivered to the petitioner, therefore, in the facts and circumstances of the case, the impugned orders passed by the District Magistrate and the Commissioner Kumaun against the petitioner cannot be held justified and proper. Morever, the Commissioner had directed not to issue arm licence for a period of one year. This period of one year has already expired on 2.3.2006.

Having considered the entire material placed on record and for the reasons aforesaid, I am not inclined to uphold the findings recorded by District Magistrate as well as the respondent no.2 especially when the petitioner was not charge-sheeted by the police.

The writ petition is hereby allowed. The impugned judgment and order dated 9-12-2004 passed by the District Magistrate and the order dated 2.3.2005 passed by the learned Commissioner are set aside. The authority concerned is directed to release the arms and renew the arms license in favour of the petitioner as per Rules. The petitioner may approach the authorities concerned for release of his arms as well as renewal of the arms licence.

**(B.S. Verma, J.)**

RCP